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M-TRAC

for rail safety

SUBMISSION
TO THE
STANDING COMMITTEE ON TRANSPORT
HOUSE OF COMMONS
OTTAWA

PROPOSAL TO STRENGTHEN BILL C-2
AN ACT TO ESTABLISH THE
TRANSPORTATION ACCIDENT
INVESTIGATION BOARD

TORONTO, ONTARIO
MAY 18, 1989

M-TRAC is a non-profit Metrowide umbrella organization of ratepayers, residents and other groups who following the Mississauga train derailment joined forces to investigate and advocate rail safety in densely populated urban areas. Members are committed to initiate legislative and other changes necessary to ensure public safety particularly in the transport of dangerous commodities by rail.

We gratefully acknowledge contributions from individuals, groups, municipalities and the Province of Ontario whose support made this and other reports and submissions possible.

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for rail safety

METRO TORONTO RESIDENTS' ACTION COMMITTEE

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May 18, 1989

The Chairman and
Members of the Standing
Committee on Transport
Houses of Parliament
Ottawa

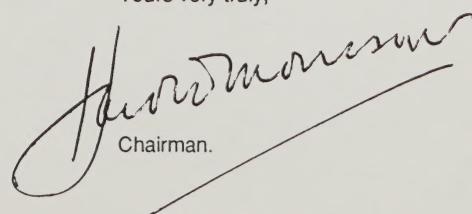
Dear Chairman and Members:

BILL C-2
Act to establish the Transportation
Accident Investigation Board

We are pleased to provide you herewith our comments and suggestions to ensure the sound application of the proposed Transportation Accident Investigation Board as a means of enhancing public safety, more particularly in high-density urban areas and in specific relating to the transport of dangerous goods by rail.

We appreciate the opportunity of appearing before you and trust that our efforts will have some bearing on the strengthening of this Act to the point where the public will have full confidence in the effectiveness of the Board.

Yours very truly,



Chairman.



S U M M A R Y

THE THRUST OF THIS SUBMISSION IS TO ENSURE PUBLIC CONFIDENCE IN THE NEW BOARD, PROMPT AND THOROUGH INVESTIGATION OF ALL SERIOUS ACCIDENTS, ADEQUATE BOARD POWERS INCLUDING AUTHORITY TO ISSUE ORDERS, COMPLETE SEPARATION AND INDEPENDENCE OF THE BOARD, CO-OPERATION WITH THE U.S. NATIONAL TRANSPORTATION SAFETY BOARD AND PROMPT DISCLOSURE OF FINDINGS TO THE PUBLIC.

To the Chairman and Members

The Standing Committee on Transport

House of Commons

Ottawa

BILL C-2

**An Act to establish the Transportation
Accident Investigation Board**

1. The M-TRAC organization has a lengthy history of participation in various semi-judicial and government investigations in rail accidents, especially in the transport of dangerous goods through high-density areas. This participation goes back to the very dangerous 1979 derailment in Mississauga which forced the evacuation of almost a quarter-million people amid the threat of a major disaster.

2. The news of that occurrence was heard around the world and brought much comment on how such an accident could take place. There was a thorough investigation and finally some solutions but it was a slow process, leaving much of the public still highly exposed even months after the accident took place.

3. Because of this high exposure and because it appeared that the federal investigative structure was either inadequately formed or slow to act, the M-TRAC organization was forced to take a leadership role in seeking a more efficient and more productive process. We welcomed this government's decision



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to proceed with the establishment of a comprehensive accident investigation board, similar to the one already functioning in Washington, D.C., which reports directly to Congress.

4 . Since the 1979 Mississauga derailment, there have been many other rail accidents, causing heavy damage, injury and loss of life. The investigative process has been slow and not very productive. There have been too many bureaucratic tie-ups and not enough substance in the final reports, some of which have taken more than a year to produce. Public anxiety over the process has increased and the frustration has boiled over into accusations of bureaucratic foot-dragging and manipulation to lull the public into misplaced complacency.

5 . We have seen examples of this problem in the air investigative process as well. Public confidence in the Canadian Aviation Safety Board has not been high and the bickering in the Board's directorship has been an embarrassment to this country. We can and we need to do better.

6 . When this government took office, the Honourable Don Mazankowski, who was Minister of Transport, recognized the problem, especially in the rail situation, and pledged fast, interim public reports on accident investigations. To date, that pledge has not been honoured by the bureaucracy. Mr. Mazankowski stated that an interim report should be available by the investigator within 60 days. We have yet to see such a target being met. The bureaucracy finds all sorts of

reasons why reports from the investigator must be transferred from one branch to another before the public is given an inkling of what is going on.

7. We supported this government's decision to abolish the Canadian Transport Commission because, we believed, it wore too many hats. It was the regulator, the enforcer, the investigator and even the judge when accident investigations took place. We believed it was necessary to separate these powers and to ensure that the regulator does not interfere with the investigation and the decisions and recommendations of the investigators. There had to be a clear signal to the public that the independence of the investigative board was paramount and unbreachable.

8. So we welcomed the government's decision to establish this new comprehensive accident investigation board and we responded positively during the consultative period when this Act, Bill C-2, was being drafted. But we are dismayed by some aspects of this Bill and we fear public confidence in the new Board will not be high if the wording in this Bill goes unaltered.

9. We support the concept of a multi-modal Board as a means of increasing efficient use of available resources and quick sharing of technological experience. We would hope that the new Board will have adequate research tools to aid in investigations and adequate financial resources to ensure thorough analysis. At each step the safety of the public must be at the forefront of the investigative process. The idea that an investigator can leisurely program the

investigation in his own good time and produce a document destined for a pigeonhole should be roundly condemned. The investigator has a duty to the public to get at the heart of the accident and recommend remedies as quickly as possible.

10. And so we appeal to you to insert in Bill C-2 instruction to the new Board that investigations must be concluded promptly and where it becomes evident that complex causes will lead to report delays, an interim advisory statement should be made available to the public, possibly within 60 days after the investigation commences, outlining the stage of the investigation at that time and where possible providing some interim safety measures that might help prevent another such occurrence.

11. This appeal for prompt reporting to the public is not frivolous. It is based on actual cases, including events in our own immediate Toronto area where a serious rail accident took place and despite all our efforts to get a report to the public quickly, the bureaucracy took more than a year to yield a sketchy document that could have been produced in a matter of a few months. While the public anxiously waited for official assurance that everything was being done to prevent recurrence of the accident, it was evident the investigator was taking his own good time to complete the flimsy document —his last act before retirement.

12. That kind of approach must not be allowed to develop in the new Board. The law must be clear. The Board must act promptly and complete its

work with speed and efficiency. It must make the public aware, from time to time, what is going on and where possible issue assurances that the public is being protected through the distributions of interim reports.

13. The investigator must not only be efficient but armed with sufficient authority to ensure that his work is not held up or sidetracked. We believe Bill C-2 should be strengthened to give the Board authority to issue orders, to whatever party may be involved, not only to produce documents —which is already in the act—but to cease operations or other activities on an interim or temporary basis if the Board deems that such a decision is essential during the investigative process. The defunct Canadian Transport Commission had the power to issue such orders and we cannot see why the new Board should be stripped of such essential authority. This does not mean that the Board would issue cease-operations orders helter-skelter but would have the power to do so in the case of extreme need, at the same time preserving the Board's independence so that it does not have to go to political authorities and plead for such action, whenever an emergency arises.

14. To insure the separation of powers and the Board's independence, it should not have to report directly to the Minister of Transport but should have the ability to lay reports before Parliament through some other less-involved Minister, such as a Minister without Portfolio, or through the Speaker. This will help assure the public that the regulator is not in a position of being able to bring undue influence on the Board's findings and recommendations.

15. That brings us to the strangest and most alarming part of Bill C-2. We refer to subsection (2) of Section 24 of the Act which virtually orders —and we emphasize the word “orders”— the Board to send a draft of its investigation report to the Minister of Transport or other Minister or person who has an interest in the findings before the report is finally put together and issued to the public. After all the emphasis we have placed on separation of powers and after all the assurances we have been given by federal authorities that the Board's complete independence will be safeguarded, we have this blatant command to the Board to consult with other departments and officials during the preparation of the investigation report and even change the wording, if necessary, to comply with the influence of these officials. All of this is to be done secretly before the public is made aware of the Board's findings and recommendations. We were so shocked by this insertion in the Act that we immediately consulted with various experts on the Board's so-called independence. The general reaction was that the Board's independence would be violated.

16. We urge this Committee to eliminate subsection (2) of Section 24. The Board should not have to consult with anyone before issuing its report and findings. Least of all, it should not have to consult with the regulator who may have been at fault or partially at fault in the process that led to the accident. The Board should have powers to call anyone it wishes to obtain explanations why certain policies and practices were followed but it certainly should not be ordered to consult with these people in the drafting of its final report. Just imagine the public reaction if the law commanded a court judge to consult with various

interested parties in the wording of his rulings and judgements. We cannot understand how the drafters of this Act ever allowed themselves the indulgence of inserting subsection (2) of Section 24, knowing what the public reaction would be. This is a shameful attempt to hoodwink the public into believing in the credibility of the new Board and its independent investigations while at the same time ensuring that those who might be in the Board's line of fire are given a secret means of escape.

17. We cannot emphasize too strongly our opposition to subsection (2) of Section 24. There is no place for the regulator in the independent probe of an accident and in the decisions and recommendations which may involve criticism of the existing regulations and the need for change. You will recall having received from the Minister of Transport the Majority and Minority Reports of the federal task force —the Gilbert Task Force— which had been established to look into the dangerous goods rail transport situation in the greater Toronto area. Those reports were completed last year and are in your hands for action. One important recommendation of the Majority Report is that accident investigations be separated from the regulatory process and that the investigation board be seen as operating independently. We urge you again to pay heed to these many appeals and strike out subsection (2) of Section 24 of Bill C-2.

18. If you need precedence for this kind of independence look to the situation in Washington where the National Transportation Safety Board conducts accident investigations and then makes its recommendations to the various

government departments involved. Sometimes there is a clash in views between the National Transportation Safety Board and the Federal Railroad Administration, which is the government arm dealing with interstate railways. But in most cases the recommendations of the National Transportation Safety Board are accepted by government departments and by transport industries. It works in the United States and it can work here.

19. And while we are dealing with the National Transportation Safety Board, we would urge you to consider closer working relations between that body and the equivalent Canadian bodies for purposes of enhancing cross-border transport safety. That is another recommendation of the Gilbert Task Force which studied the rail transport situation in the Toronto Area. We need good working relations between the two countries to ensure that safety regulations introduced on this side of the border are not frustrated by different regulations introduced on the other side. We had a case where Canadian regulations required an orange band on dangerous goods tank cars for easy identification by emergency response forces. When the American parents of Canadian chemical companies got wind of what was going on in Canada, they used their influence in Washington to persuade American authorities not to support the Canadian move. And so we had a case where American tank cars coming into Canada did not need the orange band and the orange band on Canadian tank cars going into the United States were puzzling to American authorities. Now Canadian chemical companies are arguing that the orange band is confusing and unnecessary in Canada and are demanding that the regulations be changed.

20. Good working relations between the two investigative bodies will help promote equivalent safety regulations on cross-border traffic and help in transport safety research. We see the possibility of a joint research data bank as a means of enhancing the investigator's access to historical data that may help him in identifying underlying accident causes and the frequency of such causes and assisting him in making recommendations for corrective action. We believe the investigator should not only reach findings but make recommendations. After all, he is the expert on the site, not an armchair expert sitting behind a desk.

21. We have touched only on a few points in this submission but we believe they merit your attention. The independence of the Board is paramount and there should be no loopholes in the law that will challenge that independence. The law must instruct the Board to be prompt in its accident investigation reports and where a long period of delay appears likely, there should be interim public reports, possibly within 60 days of the start of the investigation, to keep the public abreast of developments. Where an investigator discovers activities which may have been a major factor in the accident , he should have the power to issue orders immediately so that such activity ceases until the investigation is completed and recommendations are issued to promote revision of the unacceptable practices and activities. This power to issue orders would, of covers, cover only a limited period. It would be a much-needed emergency action which later might be the subject of debate before a show-cause hearing. And the order might finally be lifted or made permanent. But it would be detrimental to the public if the investigator during the

course of his investigation discovers a dangerous activity and has no means of doing anything about it except to mention it in his final report. That would not serve the best interests of the public or the best interests of the government's safety programs.

22. The question has arisen whether the transport systems covered by the new legislation should not also include trucking, at least trucks crossing provincial lines. We believe, of course, that trucking should be fully covered but it appears there is insufficient federal legislation relating to the trucking industry to make accident investigations, findings and recommendations fully effective. It may be that trucking should be given further consideration by the drafting authorities. Surely, where there is a rail accident or airport accident involving trucking as one of the factors in the accident, the recommendations of the Board must cover the trucking situation. This cannot be avoided. The Board cannot turn a blind eye on the relation of the truck to the airport or rail accident. Whether the Board can impose orders on the trucking owners or operators is another matter. This is an area which requires further study.

23. You have heard argument from previous witnesses that perhaps too much attention is being paid to railway accident investigations and that the number should be reduced. I believe this argument was raised by the Canadian National and by Mr. Thorneycroft, the chairman of the controversial Canadian Aviation Safety Board. You should keep in mind that Mr. Thorneycroft is a former air force general with little experience in rail operations. As for Canadian National,

there is obviously a vested interest in protecting rail operations from too much probing by government inspectors. I believe that if the rail industry had its way, it would support the idea of self-policing with the public given little information on what actually took place in an accident.

Air accidents tend to be more spectacular but rail accidents, especially those involving dangerous goods, can be deadly serious. You only have to recall the Mississauga derailment, the Hinton collision, or the horrifying derailments and chemical spills in Livingston, La., or San Antonio, Texas, or the recent accident near Los Angeles where a runaway train smashed 14 homes and killed three people, along with many other injuries and millions of dollars in damage. You will see a photo of the California derailment at the back of this submission.

We hope the person appointed as chairman of the new Board holds a balanced view and not decide to downplay rail investigations because they may be boring, too technical or not as spectacular as air accidents. There must be total dedication to safety and performance in all modes of transport. It is a matter of experience that vigilance and investigation in one relatively minor accident might lead to saving many lives and the prevention of major accidents.

24. To sum up, we welcome this opportunity of making our comments on Bill C-2. As you know, we made a similar submission during your Committee's study of the bill to enact the Railway Safety Act. We have approached these studies and comments from the public point of view and from our experience in

dealing with safety needs and the prevention of accidents. And that, we believe should be a major benefit of accident investigations: to help prevent recurrences. It does the transport industries no good to tolerate or encourage practices and policies that allow accidents to take place. Cost-cutting operations sometimes lead to short-term monetary gains but long-term human suffering. We need an accident investigation board that has credibility, ensured by its competence and independence. We need prompt action by the investigator and prompt reports and we need assurance that the findings and recommendations of the board are not pigeonholed or swept under the bureaucratic carpet.

Harold Morrison

Chairman.

THE TRAGEDY OF AN ACCIDENT

This is an aerial view of the May 12, 1989, rail accident in San Bernadino, California, where four locomotives and 69 cars, slammed into 14 houses at high speed, with at least three dead and seven injured. It happened in California but it can happen in Canada. The equipment is the same; the freight is the same. The problems associated with rail operations are North American problems, making joint safety moves by Canada and the United States a matter of common sense.



(Photo: A.P.)

